



9 January 2020

Secretary
Economics and Governance Committee
Parliament House
George Street
Brisbane
Qld 4000

Submission on the *Electoral and Other Legislation (Accountability, Integrity and Other Matters) Bill 2019* (Qld)

Dear Members,

Thank you for the opportunity to provide feedback on the *Electoral and Other Legislation (Accountability, Integrity and Other Matters) Bills 2019* (the Bill).

BirdLife Australia is a national bird conservation charity, with more than 170,000 supporters, donors, volunteers and members across Australia. Our primary objective is to conserve and protect Australia's native birds from extinction.

BirdLife Australia has played a major role in threatened species conservation for over 100 years. Our core programs adopt a long-term science-based multi-species approach to bird conservation, including for Beach-nesting Birds, Migratory Shorebirds, Woodland Birds, Mallee Birds and Key Biodiversity Areas (critical threatened bird habitat locations).

BirdLife's work involves partners and supporters in research, education, on ground conservation action and science-based advocacy to influence policy and practise change for the protection of native birds and their habitats. More than 35% of BirdLife's activity is funded by donation from thousands of small and mid-level donors, administered by a lean and efficient team.

While we applaud the stated intention of the Bill to make Queensland Elections fairer and limit the influence that significant funds from third parties may have on politicians in Queensland, we have serious concerns that the Bill will significantly reduce the capacity and capability of charities such as BirdLife Australia to ensure public debate on policies and projects that have an environmental impact are informed by science.

BirdLife Australia
Suite 2-05
60 Leicester Street
Carlton VIC 3053
T 03 9347 0757
F 03 9347 9323
info@birdlife.org.au
birdlife.org.au

ABN 75 149 124 774

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1. *The Bill will prevent charities and not-for-profits from advocating for public policy and action for public and environmental benefit.*

The Bill applies a broad definition of electoral expenditure, including expenditure on public communications for the dominant purpose of directly or indirectly influencing voting at an election.

This broad definition will capture the regular expenditure of charities that is used for participation in public policy debate, research, and public communications on policy questions in time leading up to a Queensland state election.

In conjunction with the local voluntary BirdLife community group based in Brisbane, BirdLife Australia has been working for many years to protect Toondah Harbour from major private commercial, residential and marine developments. Toondah Harbour is located within a Ramsar – listed wetland protected by an international treaty because of its ecological value and importance as habitat for migratory birds including the Critically Endangered Easter Curlew.

BirdLife's activities include working with the local community to generate public awareness, debate and policy engagement on the issue to ensure the decision considers the science and community feedback. This is an integral part of BirdLife's national Migratory Shorebirds Conservation Program to protect habitat for the Eastern Curlew, Critically Endangered under the Australian Government's *Environment Protection and Biodiversity Conservation Act 1999* and assessment by the International Union for Conservation of Nature as Endangered. As such, donations are received to support national conservation programs of which national or regional public advocacy may be one component.

As well as inhibiting organisations' ability to engage in non-partisan awareness raising, impacts to future levels of donations will have a significant impact on the ability of BirdLife and similar organisations to carry out community conservation activities. For example, BirdLife members, supporters and volunteers carry out numerous bird monitoring activities across Queensland which are relied upon by the Queensland Department of Environment and Science to inform policy and programs. Awareness raising of issues affecting wildlife, their habitat and threats to them accompanies most on-ground conservation and citizen science activity.

2. *The cap on donations limits non-partisan issues-based advocacy and conservation activities*

The Bill limits philanthropic donations that can be used for public interest advocacy work which meets the proposed broad definition of electoral expenditure to \$4000 per donor over a four-year period.



The cap on donations used to support electoral expenditure will limit charities' non-partisan issue-based advocacy in the time leading up to the state elections as the ability of charities and community groups to stand up for and represent the interests of everyday Queenslanders and the environment is compromised.

This cap on donations gags the right of civil society to engage in science-based policy debate on behalf of supporters and limits BirdLife Australia's ability to continue with ongoing public interest advocacy in the jurisdiction.

3. The compliance burden on small to medium sized charities is prohibitive

New requirements for administering donations that are likely to be used for electoral expenditure include the requirement for notification for donations of \$1000 and over to be made by the recipient and donor, the requirement to appoint an agent, maintain a separate state bank account, and determine in the first instance what classifies as 'electoral expenditure'. These requirements are complex, impractical, time and resource consuming and a significant barrier to non-partisan issue-based advocacy for the organisation, and a significant barrier to donor loyalty.

For the charity (recipient), this requires additional administration and therefore cost - either the establishment and registration of multiple Deductible Gift Recipient compliant bank accounts for BirdLife Australia, or constant transfers between the organisations' current DGR-registered account and a state-based bank account to ensure donations likely to be deemed to be in scope of the new Bill's requirements are held in a compliant location. Either option significantly increases the administration, monitoring and reporting burdens and therefore costs of already lean finance, administration operations.

It requires the charity to determine at the time of receipt of a donation whether or not it will be used in future to support electoral expenditure.

In addition, initially identifying the portion of any donation that may be used under the definition of 'electoral expenditure' in Queensland, adds further burden and complexity to donation administration.

The added burden of notification required by the donor detracts from the philanthropic intent of the gift and is likely to influence the donors' willingness and interest in gifting future donations.

In some instances the result may be that organisations expend more money meeting compliance with the administrative requirements than on the actual electoral expenditure for public interest advocacy on issues. This impact is both unreasonable and likely to have a chilling effect, deterring organisations from



participation in election-related issues debate rather than face the significant administration required for a registered third party campaigner.

Recommendations:

BirdLife Australia supports the following amendments to the Bill:

1. Amendment to the definition of ‘electoral expenditure’

BirdLife Australia supports inserting the following subsection to proposed section 199 of the Bill, which defines electoral expenditure:

(6) Expenditure incurred by a third party registered under the Australian Charities and Not-for-profits Commission Act 2012 or with an annual income of less than \$50,000 is only electoral expenditure if material that is published, aired or otherwise disseminated refers to –

(d) a candidate or political party; and

(e) how a person should vote at an election

As both categories of organisation pose a very low risk of being used to circumvent the donation cap to candidates and political parties, the amendment excludes organisations in these categories from the onerous obligations and risk of penalty under the Bill, unless they are undertaking specific and clear ‘vote shifting’ work.

Narrowing the definition of ‘electoral expenditure’ for these two categories of third party only, is preferable to raising the threshold for registration as a third party or raising the donation cap for third parties.

This amendment follows the approach of the Victorian Government where a narrower definition of ‘political expenditure’ for third parties was designed to protect the rights of third parties to pursue social issues advocacy and the right of donors to fund it.ⁱ

While the definition we propose is narrower than the Victorian definition this is in order to best preserve the intended purpose of the Bill while protecting the ability of charities and small community groups to pursue social issues advocacy, which we see as a crucial aspect of Australian democracy.



2. Donations that are not related to or used for electoral expenditure should not have to be disclosed to the Queensland Electoral Commission

An amendment to the Bill (section 263) is required to state clearly that donations that are not used or electoral expenditure are not required to be disclosed to the Queensland Electoral Commission.

Yours sincerely

Diana Gibson
Head - Communications, Engagement Development
BirdLife Australia

i reference Victorian Electoral Legislation Amendment Bill 2018 , Explanatory Memorandum (Clause 40)